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## Via HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re: **STB Ex Parte No. 646 (Sub No. 1) -- Simplified Standard for Rail Rate Cases**

Dear Secretary Williams:

BNSF Railway Company ("BNSF") submits this letter in response to the September 13, 2006 request of Mr. DiMichael as counsel for The National Industrial Transportation League ("NITL") for workpapers underlying the Board's July 28, 2006 decision in this docket. BNSF is concerned that the workpapers sought by Mr. DiMichael may contain confidential information obtained by the Board from BNSF that is not subject to disclosure. To the extent the workpapers sought by Mr. DiMichael contain confidential BNSF information, BNSF objects to the disclosure of the workpapers.

First, Mr. DiMichael seeks analyses relating to Table 2 on page 37 of the Board's decision, "including analyses using the Board's Waybill Sample . . . ." To the extent the workpapers sought by Mr. DiMichael contain Waybill data, it would not be proper to provide those workpapers to Mr. DiMichael. The Board has specific rules governing access to the Waybill Sample data, and Mr. DiMichael's request does not comply with the requirements set out in the rules. *See* 49 CFR §1244.9. In addition, the Board appears to have used unmasked revenue data from the Waybill Sample to generate the information in Table 2. Unmasked revenue data is extremely confidential and the Board has never allowed such unmasked data to be disclosed to persons other than selected Board staff.

Second, Mr. DiMichael includes several requests for workpapers underlying the calculation of the average or total costs for particular categories of construction costs set forth in specified tables in the Board's July 28, 2006 decision. The average or total costs that appear in those tables are based on the Board's decisions in recent SAC cases, including several cases in which BNSF was the respondent. In all of those cases, the Board issued protective orders limiting the disclosure of confidential information




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used by the parties in their presentation of SAC evidence. To the extent the workpapers underlying the Board's construction cost calculations in the July 28, 2006 decision contain confidential information subject to the protective orders in particular cases, it would not be proper to provide those workpapers to Mr. DiMichael.

Thank you for your consideration of BNSF's position.

Sincerely,



Anthony J. LaRocca  
Counsel for BNSF Railway Company

cc: Parties of Record